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May 15, 2015

Stephanie Vaughn
17-mile LPRSA RI/FS Remedial Project Manager
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Via Electronic Delivery

**Re: Lower Passaic River Study Area (LPRSA) Draft Baseline Ecological Risk Assessment (BERA)
– USEPA Region 2 Comments – May 2007 Administrative Agreement and Order on
Consent for Remedial Investigation/Feasibility Study – CERCLA Docket No. 02-2007-2009
(AOC)**

Dear Ms. Vaughn:

This will acknowledge and respond to, on a strictly preliminary basis, the USEPA Region 2 (Region 2) comments sent to the Cooperating Parties Group (CPG) on May 1, 2015 (one day after the CPG submitted the draft 17-mile LPRSA Feasibility Study to Region 2), with respect to the draft BERA the CPG submitted to Region 2 on June 13, 2014. The CPG believes the draft BERA should have been accepted by Region 2, pursuant to paragraph 44 (a or b) of the AOC. The CPG is continuing to evaluate the extensive list of comments Region 2 provided and reserves its right to respond in detail in due course.

A primary concern of the CPG with Region 2's BERA comments is the fact that they appear to ignore the agreements and understandings reached by Region 2 and the CPG through the extensive amount of interactions (i.e., meetings, calls, correspondence), as well as the preparation and review of risk assessment documents, throughout the RI/FS process since 2007. The following examples highlight major problems with the comments:

- General Comment 2, which directs the CPG to treat ecological exposure areas using an approach that is inconsistent with the ecological risk assessment presented in Region 2's 8-Mile FFS RI (see Appendix D, Section 4.2.1 paragraph 1).
- General Comment 3 relates to the incorporation of the common carp (an invasive species introduced to the Lower Passaic River) into the 17-mile BERA.
- General Comment 6 and Specific Comment 71 are explicitly incomplete and refer to information or materials Region 2 will provide to the CPG, but has not yet done so, leaving the CPG in a position of being directed to prepare expensive and time consuming responses and revisions without knowing what revisions are required or will be acceptable;
- Numerous comments that are inconsistent with Region 2's approved August 2009 Problem Formulation Document (PFD), the October 2013 Draft Risk Assessment and Risk Characteristic plan (RARC), Region 2's previous RARC comments and the April 2014 Data

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Usability Memorandum (and associated comments). Some specific examples identified thus far include:

- General Comment 11 - criticizes the approach for dealing with non-detect (ND) values and states that the same approach should be used in both the BERA and Human Health Risk Assessment (HHRA). The CPG used NDs values consistent with the April 2014 Data Usability Memorandum, which addressed the Region's 2010 comments on an earlier version of this memorandum. The CPG did treat ND values the same in the BERA and HHRA.
- General Comment 13 - states that evaluation of polycyclic aromatic hydrocarbons (PAHs) in sediment should be conducted using 34 PAHs. The CPG used 16 PAHs which is consistent with the April 2014 Data Usability Memorandum and the Region's 2010 comments. Based on the EPA-CPG discussions on May 7 and 14, this comment may be resolved.
- Specific Comment 44 - requests that risk questions cited from the final PFD be reworded. However, this would make the risk questions in the BERA different than the risk questions in the Region 2-approved PFD.
- Specific Comment 64 directs that *"all of the toxicity data should also be compared to the control data as per previous agreement with EPA"*. The CPG has presented a comparison of the toxicity data to the control data in the Fall 2009 Sediment Toxicity Test Data Report for the Lower Passaic River Study Area, Draft, January 31, 2012. The October 2013 RARC calls for a comparison to reference data as part of the risk characterization in the BERA. Moreover, EPA's January 2013 Revised Comments on the NBSA Problem Formulation Document (dated December 2012) states: *"use of control sediment is for QA/QC purposes; not for making site-related decisions. Ecological risk decisions should be based on responses relative to reference and concentration-response relationships."*
- Specific Comment 78 - requires evaluation of all surface water samples for the benthos assessment, not just bottom samples. However, this contradicts Region 2's September 2010 RARC comments which stated that benthos should be evaluated with surface water *"immediately above the sediment, from 0-6 inches."*
- Specific Comments 153 and 155 (and other SLERA-related comments) - require the CPG to change from the endpoint and receptor approach presented in the endpoint assessment table in the Region 2-approved PFD.
- Specific Comment 172 - states that the COPEC screening process described in the SLERA and summarized in three flow charts is inappropriate and that numerous revisions are necessary. The CPG addressed Region 2's November 2010 comments on these flow charts in its October 2013 revised draft RARC. Region 2 did not provide any additional comments on these flow charts in its January 2014 comments.

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- Specific Comment 219 - requests a summary of biomass data that the CPG never collected and does not exist. Other comments indicate a lack of LPRSA project understanding and history by some reviewers.


Of note, EPA stated in its May 14, 2014 letter to the CPG that ".... EPA has not directed the CPG to deviate from the 2009 Problem Formulation Document." The Region's BERA comments now appear to be deviating from the 2009 PFD that it approved.

The CPG has already begun discussions with Region 2 with telephone conferences on May 7 and 14, and expects to continue these discussions on a weekly basis first on the BERA comments and then on anticipated Baseline Human Health Risk Assessment comments. The CPG will continue to identify and elaborate its concerns as was done on the two recent telephone conferences and as expressed above in an attempt to resolve the issues expeditiously and informally. As is clear, Region 2 has indicated that the comments it has provided are not complete. Thus, the CPG reserves its right to take other steps, such as invoking dispute resolution under Section XV of the AOC to protect its interests, after Region 2 provides all of its comments on the BERA. However, to the extent that Region 2 deems its comments complete and not preliminary, then this letter constitutes the invocation of dispute resolution regarding the same pursuant to Section XV of the AOC.

The CPG requests that Region 2 include this letter into the Administrative Record for the 17-mile LPRSA operable unit of the Diamond Alkali Superfund Site.

Please contact Bill Potter or me with any questions or comments.

Very truly yours,
de maximis, inc.



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